

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

MICHAEL BANDY,)
)
Plaintiff,) No. 1:10-cv-1073-TWP-DML
v.)
)
INTERSTATE BRANDS)
CORPORATION,)
)
Defendant.)

Entry Concerning Selected Matters

The court, having considered the above action and the matters which are pending, makes the following rulings:

1. The plaintiff's request to proceed *in forma pauperis* is **granted**.
2. The plaintiff's complaint sets forth his conclusory allegation that he suffered an adverse employment action in retaliation for having reported sexual harassment by his employer.
 - a. Because the court has granted the plaintiff's request to proceed *in forma pauperis*, it also has a duty to dismiss the complaint if it fails to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e)(2)(B). This statute requires that the complaint be dismissed if it fails to state a claim upon which relief can be granted. *Id.*
 - b. In order to survive dismissal for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). "But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not 'show[n]'-that the pleader is entitled to relief." *Id.* at 1950 (quoting *Fed.R.Civ.P. 8(a)(2)*). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 555, 557).

c. Applying the foregoing standard, the complaint in this case fails to state a claim upon which relief can be granted because it lacks factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."

d. Accordingly, the complaint is **dismissed**.

3. The dismissal of the complaint will not in this instance lead to the dismissal of the action at present. *Benjamin v. United States*, 833 F.2d 669, 671 (7th Cir. 1987). Instead, the plaintiff shall have **through September 9, 2010**, in which **to file an amended complaint**.

4. In filing an amended complaint, the plaintiff shall conform to the following guidelines: (a) the amended complaint shall comply with the requirement of Rule 8(a)(2) of the *Federal Rules of Civil Procedure* that pleadings contain "a short and plain statement of the claim showing that the pleader is entitled to relief. . . .," (b) the amended complaint shall comply with the requirement of Rule 10 that the allegations in a complaint be made in numbered paragraphs, each of which should recite, as far as practicable, only a single set of circumstances, (c) the amended complaint must identify what legal injury he claims to have suffered and what persons are responsible for each such legal injury, and (d) the amended complaint shall contain a clear statement of the relief which is sought.

5. Proceedings other than as specified above are **stayed** until the amended complaint is filed or until the deadline for the filing of an amended complaint has passed.

6. If an amended complaint is filed the court will issue whatever order is warranted. If no amended complaint is filed as directed, the action will be dismissed consistent with the analysis in paragraph 2 of this Entry.

IT IS SO ORDERED.

Date: 08/27/2010

Distribution:

Michael Bandy
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Kokomo, IN 46901

Hon. Tanya Walton Pratt
Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana